IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12642 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

YASMINBEN YUNUSBHAI CHHAGLA W/O. ALTAF H SALAT - Petitioner

Versus

ISMAILKHAN AMIRKHAN GHORI - Respondents

==========

Appearance :
MR RC KAKKAD for Petitioners.
None for Respondent(s) : 1,
MR SANDEEP N BHATT for Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7,1.2.8

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 22/11/2006
ORAL JUDGMENT

1. The petitioners – original applicants have filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the order dated 04.05.2005 passed below an application Exh. 11 by the learned Civil Judge (J.D.), Jetpur in Civil Misc. Application No. 12 of 2004 whereby the application moved on behalf of the legal heirs of Amirkhan Daulatkhan Gauri for joining as party was granted.

2. This Court has issued rule on 26.10.2005 and ad-interim relief granted earlier was ordered to be continued till further order.

3. Heard Mr. R.C. Kakkad, learned advocate appearing for the petitioner and Mr. Sandeep N. Bhatt, learned advocate appearing for the respondents.

4. It is the case of the petitioners that the petitioners have preferred C.M.A. No. 12 of 2004 for getting succession / heirship certificate for immovable property of deceased Yunusbhai Abdulkarim Chhagla and Mominbhai Yunusbhai Chhagla. In that application, the present respondents have filed an application at Exh. 11 for joining as party. The petitioners have raised objection against that application vide Exh. 24 and after considering the same, the learned Judge has passed an order below an application Exh. 11 on 17.06.2005. The said order is under challenge.

5. Mr. R.C. Kakkad, learned advocate appearing for the petitioners has submitted that in an application for getting heirship / succession certificate, only those persons can be joined as parties who are heirs and legal representatives of the deceased person and who are having any right, title or interest in the property of the deceased person. The present respondents are not the legal heirs or successors of the deceased and hence, they have no right to move

such an application. He has further submitted that deceased Amirkhan Daulatkhan Gauri has nothing to do with the present proceedings and, therefore, the heirs of deceased Amirkhan Daulatkhan Gauri who have preferred the application Exh. 11 are not necessary party and, therefore, the impugned order is required to be quashed and set aside.

6. Mr. Sandeep N. Bhatt, learned advocate appearing for the respondents has submitted that the properties in question in respect of which succession certificate or heirship certificate is sought to be obtained are belonging to the present respondents and hence, they have raised objections before the Court. For the purpose of consideration of these objections, an application was moved to be joined as party in the said proceedings. He has, therefore, submitted that the Learned Trial Judge has rightly passed an order permitting the respondents to be joined as parties in the said proceedings. He has, therefore, submitted that no interference is called for in the impugned order passed by the Learned

Trial Judge.

7. After having heard learned advocates appearing for the respective parties and after having gone through the impugned order, the Court is of the view that the present respondents are not necessary parties in the proceedings and are not required to be joined as parties in that application. The application is moved by the legal heirs of the deceased Yunusbhai Abdulkarim Chhagla and Mominbhai Yunusbhai Chhagla for obtaining heirship / succession certificate and in that application, only legal heirs and representatives of deceased Yunusbhai Abdulkarim Chhagla and Mominbhai Yunusbhai Chhagla are necessary and proper parties. The present respondents are admittedly not the legal heirs or successors of the deceased Yunusbhai Abdulkarim Chhagla and Mominbhai Yunusbhai Chhagla. The Learned Trial Judge has, therefore, committed an error in joining them as parties in the said proceedings. The impugned order is, therefore, required to be quashed and set aside and it is

accordingly quashed.

8. It is clarified that if the legal heirs of deceased Amirkhan Daulatkhan Gauri, present respondents have any objection against issuance of the succession / heirship certificate in respect of the properties over which they claim to have any interest, in favour of the present petitioners, they can certainly raise objections and before issuance of heirship or succession certificates, those objections are required to be considered.

9. Subject to the aforesaid observation, the petition is allowed. Rule is made absolute without any order as to costs.

[K.A. PUJ, J.]

Savariya